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6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF CALIFORNIA

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9 UNITED STATES OF AMERICA, } Case No.: 1:22-CR-00241-JLT-SKO-1
10 Plaintiff, }
11 vs. } Defendant Richard Best's Detention Hearing
12 Richard Best, } Brief Regarding Conditions of Pretrial Release
13 Defendant. } Date: September 29, 2022
Time: 2:00 p.m.
Location:
14 }

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16 I.
SUMMARY OF ARGUMENT

17 The Indictment charges Mr. Best with one count of 18 U.S.C. § 1349 and two counts of
18 18 U.S.C. § 1343. Those crimes are not offenses listed in the Bail Reform Act, 18 USC § 3142
(f)(1). Consequently, Mr. Best's release on personal recognizance without conditions is
20 mandated under the Bail Reform Act unless the government makes an initial showing that there
21 is a serious risk that Mr. Best will flee or obstruct justice or threaten, injure, or intimidate a
22 prospective witness or juror. 18 USC § 3142 (f)(2).

24 There is no serious risk that Mr. Best will flee, obstruct justice, or act improperly toward
25 any witness or juror. Mr. Best is 68 years old with strong personal and professional ties to
26 California and it's Central Valley. He has been available to and cooperative with law

enforcement during the investigation of the alleged offenses. Given this, the government cannot make the required showing under 18 USC § 3142(f)(2) and Mr. Best must be released on personal recognizance and without conditions.

4 **II.**
5 **LAW AND ARGUMENT**

6 **A. General Principles**

7 “In our society liberty is the norm, and detention prior to trial or without trial is the
8 carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). “The Bail
9 Reform Act carefully limits the circumstances under which detention may be sought to the most
10 serious of crimes. *See* 18 U.S.C. § 3142(f) (detention hearings available if case involves crimes
11 of violence, offenses for which the sentence is life imprisonment or death, serious drug offenses,
12 or certain repeat offenders). *Id* at 747.

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15 The Bail Reform Act favors release on personal recognizance with the only conditions
16 being that the defendant obey all laws and cooperate in the collection of a DNA sample where
17 authorized. 18 U.S.C. § 3142(c)(1)(A).

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19 If, and only if, the Court determines that pretrial release on personal recognizance
20 without additional conditions is insufficient to *reasonably* assure Mr. Best’s presence in court as
21 required or that it would endanger a person or the community, then may a detention hearing be
22 held and conditions of release be ordered. 18 U.S.C. §3142(c). Pretrial detention and conditions
23 of pretrial release are last resorts.

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1 **B. Because the Government Cannot Demonstrate that any §3142(f) Factor is Present,**
2 **Mr. Best is Statutorily Entitled to Release on his Own Recognizance Without Any**
3 **Additional Conditions.**

4 “The Bail Reform Act carefully limits the circumstances under which detention may be
5 sought to the most serious of crimes. *See* 18 U.S.C. § 3142(f) (detention hearings available if
6 case involves crimes of violence, offenses for which the sentence is life imprisonment or death,
7 serious drug offenses, or certain repeat offenders). *United States v. Salerno*, 481 U.S. 739, 747,
8 (1987). 18 U.S.C. § 3142(f), in pertinent part, provides:

9 The judicial officer shall hold a hearing to determine whether any condition or
10 combination of conditions set forth in subsection (c) of this section will
11 reasonably assure the appearance of such person as required and the safety of
any other person and the community--

12 (1) upon motion of the attorney for the Government, in a case that involves--

13 (A) a crime of violence, a violation of section 1591, or an offense listed
14 in section 2332b(g)(5)(B) for which a maximum term of imprisonment of
10 years or more is prescribed;

15 (B) an offense for which the maximum sentence is life imprisonment or
death;

16 (C) an offense for which a maximum term of imprisonment of ten years
17 or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et
seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et
seq.), or chapter 705 of title 46;

18 (D) any felony if such person has been convicted of two or more offenses
19 described in subparagraphs (A) through (C) of this paragraph, or two or
more State or local offenses that would have been offenses described in
20 subparagraphs (A) through (C) of this paragraph if a circumstance giving
rise to Federal jurisdiction had existed, or a combination of such offenses;
21 or

22 (E) any felony that is not otherwise a crime of violence that involves a
minor victim or that involves the possession or use of a firearm or
23 destructive device (as those terms are defined in section 921), or any
other dangerous weapon, or involves a failure to register under section
24 2250 of title 18, United States Code; **OR**

25 (2) upon motion of the attorney for the Government or upon the judicial
26 officer's own motion, in a case that involves--

27 (A) a serious risk that such person will flee; or

1 **(B)** a serious risk that such person will obstruct or attempt to obstruct
 2 justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or
 3 intimidate, a prospective witness or juror.

4 18 U.S.C. § 3142(f) (Emphasis added.)

5 This is not a case involving any factor listed under §3142(f)(1). Because no (f)(1) factor
 6 is present in this case, the Government must establish an (f)(2) to allow a detention hearing to be
 7 held. The Government cannot make that showing. There is no *serious* risk that either Mr. Best
 8 will flee or “obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to
 9 threaten, injure, or intimidate, a prospective witness or juror.” 18 U.S.C. § 3142(f)(2).¹ A judicial
 10 officer can only hold a detention hearing pursuant to the Bail Reform Act where the Government
 11 or the court has made an initial showing that a §3142(f) factor exists.² 18 U.S.C. §3142(e);
 12 *United States v. Himler*, 797 F.2d 156, 160 (3rd Cir., 1986). In *Himler*, the Government argued
 13 that the Bail Reform Act did not limit detention hearings to only those cases in § 3142(f) and the
 14 function of that subsection was to specify which cases mandate a detention hearing. The Court
 15 disagreed:

16 The legislative history of the Bail Reform Act of 1984 makes clear that to
 17 minimize the possibility of a constitutional challenge, the drafters aimed toward
 18 a narrowly-drafted statute with the pretrial detention provision addressed to the
 19 danger from “a small but identifiable group of particularly dangerous
 20 defendants.”³

21 It is true that a hearing may be held in connection with any bail decision.
 22 However, detention may be ordered only “after a hearing pursuant to the
 23 provisions of subsection (f).”⁴ Therefore, as stated in the legislative history, “the
 24 requisite circumstances for invoking a detention hearing in effect serve to limit

25 ¹ Further, though often asserted, dangerousness is an invalid legal basis to hold a detention hearing based upon the
 26 language of the statute. Danger to the community is considered where conditioned pretrial release is appropriate. 18
 27 U.S.C. § 3142(c).

² The judicial officer may only hold a detention hearing on their own motion where a §3142(f)(2) factor exists.

³ S.Rep. No. 225, 98th Cong., 1st Sess. 6-7 (1983), U.S.Code Cong. & Admin.News 1984, pp. 3182, 3189.

⁴ 18 U.S.C. § 3142(e) (Supp. II, 1985).

1 the types of cases in which detention may be ordered prior to trial.”⁵ Pretrial
2 detention may not be considered except under carefully specified circumstances.

3 Therefore it is reasonable to interpret the statute as authorizing detention only
4 upon proof of a likelihood of flight, a threatened obstruction of justice or a
5 danger of recidivism in one or more of the crimes actually specified by the bail
statute.

6 *Himler*, *supra* at 160. (Internal Citations omitted and placed in Footnote)

7 Because there is no §3142(f) factor that the Government can establish, there is no
8 statutory basis for a detention hearing and Mr. Best must be released on his own personal
9 recognizance.

10 **C. Even if the Court Finds that § 3142(f)(2) Factor has been Established, Release on
11 Personal Recognizance is Appropriate.**

12 A “judicial officer shall order the pretrial release of the person on personal
13 recognizance...subject to the condition that the person not commit a federal, state, or local crime
14 during the period of release...” 18 U.S.C. § 3142(b)

15 In cases where *no reasonable assurance of appearance or community safety exists*, any
16 conditions imposed must be the least restrictive means to achieve the ends sought: Mr. Best’s
17 appearance as required and the safety of the community or a person within it. *See, Bell v.*
18 *Wolfish*, 441 U.S. 520, 538 (1979); *United States v. Rueb*, 612 F.Supp.2d 1068, 1072 (D. Neb.
19 2009); 18 U.S.C. § 3142(c)(1)(B).

21 Mr. Best has significant personal and professional ties to the Eastern District of
22 California and has been cooperative with law enforcement during the investigation into the
23 alleged offenses in the indictment with full knowledge that there was an ongoing criminal
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27 ⁵ S.Rep. No. 225, *supra*, at 20, U.S.Code Cong. & Admin.News 1984, at 3203.

1 investigation into Mr. Best. Mr. Best has agreed to self-surrender on September 29, 2022, and is
2 willing to surrender his passport to the court.

3 Mr. Best's actions under these circumstances show that Mr. Best poses no serious risk of
4 flight and that there is no serious risk that Mr. Best will harm any potential witness or juror or
5 obstruct justice. His actions also provide reasonable assurance to the court regarding both
6 community safety and of his appearance in court as required.
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10 **IV.**
11 **CONCLUSION**

12 Based on the foregoing, Mr. Best requests the Court order his immediate release from
13 detention and that he be placed on pretrial release on personal recognizance as specified under 18
14 U.S.C. § 3142(b).
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17 Dated: September 22, 2022

Respectfully submitted,

18 /s Jeffrey T. Hammerschmidt
19 JEFFREY T. HAMMERSCHMIDT
20 Attorney for Defendant
21 Mr. Best
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